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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

CC Docket 96-45

**REPLY COMMENTS OF THE ASSOCIATION
FOR LOCAL TELECOMMUNICATIONS SERVICES**

The Association for Local Telecommunications Services ("ALTS"), pursuant to the Commission's Notice of Proposed Rulemaking and Order Establishing a Joint Board ("Notice") released on March 8, 1996, in this proceeding, hereby submits its reply comments.

Because of the limited time for replies and the large number of comments received, ALTS is focusing its response upon certain assertions made by telephone companies and their representatives in their initial comments. Many of the other issues in this proceeding already have been extensively explored in the initial comments, and need no further amplification at the present time.

I. THE UNIVERSAL SERVICE PROVISIONS OF THE '96 ACT ARE INTENDED TO ENSURE THE PROVISION OF SERVICE TO CONSUMERS NOT TO PROTECT INCUMBENT LOCAL EXCHANGE CARRIERS.

A number of incumbent local exchange carrier ("ILEC") comments discuss the harmful effects of competition and the "stranded investment" that may result if ILECs are unable to recover expenditures they claim were made with the expectation of

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receiving universal service support.¹ Except in a limited way with rural telcos, however, the '96 Act does not shield ILECs from the challenges and benefits they may face when competitors enter their markets. There is absolutely nothing in the '96 Act in general, and in the universal service provisions in particular, that requires the Commission to allow the ILECs to recover all their embedded costs, whether prudently made or not.²

The ILECs have known for years that competition would eventually reach the local level. Any "stranded" investment in their networks is, therefore, a result of poor planning and overinvestment on their part, not the meager competition that has developed to date. Full competition in the local market is likely to take many years and, given the experience of the introduction of competition in the interexchange market, it is unlikely that even a moderate loss of market share will endanger any ILEC's viability.

**II. ALL UNIVERSAL SERVICE SUPPORT MUST BE DISTRIBUTED TO
ELIGIBLE CARRIERS ON A COMPETITIVELY NEUTRAL BASIS.**

A number of commenters argue that distribution of universal support subsidies need not be on a competitively

¹ See, e.g., Comments of the Rural Telephone Coalition.

² It should be remembered that the universal service provisions apply to consumers in rural, high cost and insular areas, not to high cost ILECs. Thus, the argument that universal service funding should be determined based upon ILEC costs, rather than, for example, the proxy model described in the Notice of Proposed Rulemaking, is inconsistent with the general thrust of the Act.

neutral basis.³ Two points need to be kept in mind, however. First, the overall thrust of the '96 Act is pro-competition. The Act seeks to encourage new entrants and to eliminate special advantages of any carrier. Second, it would be antithetical to the Act to require a carrier to contribute on a nondiscriminatory and competitively neutral basis, yet not require that eligible carriers receive subsidies on a nondiscriminatory and competitively neutral basis. Such action would create a barrier to entry in violation of Section 253 of the Act.

In all areas, other than those served by a rural telephone company,⁴ states must designate as "eligible" for universal service support any carrier that advertises and offers service "throughout the service area for which the designation is received" either through its own facilities or a combination of its facilities and resale. This requirement raises the question as to how the "service area" is to be determined and, when service is provided through resale in a high cost area, which

³ See, e.g., Comments of Rural Telephone Coalition at 4-5; Comments of USTA at 12 (USTA states at one point that the distribution of support should be undertaken in a manner that will not confer a competitive advantage on any particular carrier. Some of its specific proposals, e.g., retaining the current USF and DEM weighting only for rural telephone companies, are not competitively neutral).

⁴ In an area served by a rural telephone company, the state need not designate competitive carriers as "eligible" for universal service support unless the state finds that such designation would be in the public interest. For the purpose of universal support, this is the only difference between areas served by rural telcos and other ILECs. The Comments of the Rural Telephone Coalition to the effect that the states have a broad range of opportunities to condition or restrict competition in rural areas is thus incorrect.

carrier -- the underlying carrier or the reseller -- should receive the universal service support.

The statute generally leaves the definition of the area for which a carrier may be deemed an eligible carrier to the state commission. There is absolutely nothing in the Act that indicates that a state commission should use the ILEC service area as the area for which a competitive carrier can be deemed eligible for universal service support payments. There are many valid reasons for designating a competitive carrier eligible for support in a service area different than that served by the ILEC.

In ensuring competitive neutrality in the distribution of universal service support to eligible carriers, the Commission must also be mindful of the effect that resale of services can have on the marketplace and competitive facilities-based carriers. If the retail rate includes a universal service subsidy, a reseller would automatically receive that benefit without having to qualify as a universal service provider, and thus enjoy a competitive advantage over competitive facilities-based carriers. The facilities-based carriers would first have to qualify as universal service providers, and then succeed in somehow obtaining the same subsidy amount reflected in the rates enjoyed by the resellers. Obviously, this would be a substantial and palpably unfair burden for the facilities-based competitive industry.

III. PLAY OR PAY RATE STRUCTURES VIOLATE THE '96 ACT.

A number of commenters⁵ have raised the question of whether rate structures such as the "play or pay" system implemented by the New York Public Service Commission is permissible under the Act. As ALTS understands it, under the New York plan, carriers that undertake to provide a full range of local services through their own facilities in a service area pay a lower rate for transport and termination of their traffic on ILEC facilities. Competitive carriers who have not undertaken to provide all such local services pay a higher rate for termination of traffic.

Purportedly, this system was adopted to encourage facilities-based competition. ALTS supports any measure designed to encourage facilities-based competition as long as it is fair and does not discourage new entrants. The "play or pay" scheme is neither fair nor does it encourage new competitors to enter markets.

The plan is also clearly at odds with the '96 Act, specifically sections 252 and 254 of the Act. Section 252(d)(2) of the Act provides that there must be mutual and reciprocal recovery of costs related to termination of other carriers' traffic and that such compensation must either reflect "bill and keep," or be on the "basis of a reasonable approximation of the additional costs of terminating" traffic. New York's "play or pay" scheme does not provide for termination of traffic on the

⁵ NYNEX Comments at ii; Teleport Communications Group, Inc at 19. See New York PSC Case 94-C-0095.

basis of a mutual exchange of value (as in "bill and keep"), or a reasonable approximation of the additional costs of terminating traffic. In addition, Section 254 requires that all providers of telecommunications services should make equitable and nondiscriminatory contributions to universal service programs, and that support mechanisms be specific and predictable. New York's "play or pay" scheme results in neither equitable nor nondiscriminatory contributions, nor is it a "specific" mechanism. Thus, the New York "play or pay" program cannot withstand scrutiny under the '96 Act.

CONCLUSION

The Joint Board needs to act expeditiously in recommending new universal service rules, but it must keep in mind the basic principles of nondiscrimination and competitive neutrality towards all carriers.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Comments of the Association for Local Telecommunications Services was served May 7, 1996, on the following persons by First-Class Mail or by hand service, as indicated.


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